IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

RCRev..No. 134 of 2007()

RCA.53/2006 of RENT CONTROL APPELLATE AUTHORITY,KOZHIKODE
RCP.119/2005 of RENT CONTROL ADDL.M.C.,KOZHIKODE
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PETITIONER: APPELLANT: 1ST RESPONDENT.

P.BHASKARAN, S/O.SAMI, POOVATHUR
HOUSE, PADINHATTUMMURI AMSOM, MORIKKARA DESOM,
KAKKODI, KOZHIKODE TALUK.

BY SENIOR COUNSEL SHRI.M.C. SEN
ADV. SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

RESPONDENTS: PETITIONER.
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1. T.P.SACHEENDRA BABU, S/O.KRISHNAN,
THAMPURAN PADIKKAL HOUSE, P.O.MANKAVU,
VALAYANADU AMSOM AND DESOM, KOZHIKODE DISTRICT.

2. NAZAR, HOTEL BUSINESS-11/177,
PAZHAYAVEEDU PARAMBA NAGARAM AMSOM AND DESOM,
KOZHIKODE TALUK.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 11/04/2007, THE COURT ON 13/4/2007 PASSED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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R.C.R.No.134 of 2007
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Dated this the 13th day of April, 2007.

ORDER

Antony Dominic,J.

Tenant in R.C.P.No.119 of 2005 on the file of the Rent Control Additional Munsiff's Court, Kozhikode, whose order of eviction was affirmed in R.C.A.No.53 of 2006 by the Rent Control Appellate Authority, Kozhikode, is the revision petitioner herein. The petition was filed under Section 11(2)(b), Section 11(3) and Section 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act').

2. As per the averments in the Rent Control Petition, the revision petitioner took the building from one Appukutty Chettiar by koolie kychit dated 1.6.1974 and 13.11.1975, agreeing to a monthly rent of Rs.50/- for each premises. By Ext.A6, the building was thereafter assigned in favour of one K.P.Gangadharan Pillai and it was from Gangadharan Pillai that the respondents herein purchased the property in question as per Ext.A1 registered document No.1423/2003 dated 14.7.2003. It is alleged that despite having notified of the

transfer of title in favour of the first respondent herein by notice dated 26.7.2003, the revision petitioner kept rent in arrears from 14.7.2003. The first respondent also stated that except a partnership firm of which he was involved as a partner which was conducted in a rented premises, where there is already an order of eviction, he had no other avocation and he wanted to start a business once the revision petitioner is evicted. It was also his case that the revision petitioner sublet the premises to the second respondent in the Rent Control Petition without his consent. It was on these factual grounds eviction was sought.

3. The tenant resisted the petition contending that the premises originally belonged to Appukutty Chettiar and that the first respondent took the premises by kychit on 1.6.1974 for a monthly rent of Rs.50/-. He denied the assignment of right in respect of the scheduled building in favour of Gangadharan Pillai and also regarding the alleged intimation of transfer of title. Denying the bonafide need urged by the first respondent, it was contended that the petitioner in the Rent Control Petition was conducting two wholesale business at Big Bazaar in his own premises and the tenant also prayed for the benefit of the second proviso to Section 11(3) of the Act. The allegation of sublease and arrears of rent was also denied.

4. Before the Rent Control Court, evidence of PW1 and RW1 were recorded. Documentary evidence were also marked as Exts.A1 to A8 and B1 and B2 series. In addition to this, an Advocate Commissioner was examined as CW1 and the report and plan were also marked as Ext.C1 and C1(a) respectively. By its order dated 31st January, 2006, the Rent Control Court allowed the petition under Section 11(2)(b), Section 11(3) and Section 11(4)(i) of the Act. The tenant filed an appeal as R.C.A. No.53 of 2006, which was disposed of by judgment dated 31st January, 2007, setting aside the order of eviction under Section 11(4)(i) of the Act, but confirming the order under Section 11(2)(b) and 11(3) of the Act. It is aggrieved by the order of eviction concurrently passed under Section 11(2)(b) and Section 11(3) of the Act that this revision is filed by the tenant.

5. When the revision petition came up for hearing, the only contention raised by Senior Counsel Mr.M.C.Sen, who appeared for the revision petitioner was regarding the finding of the Rent Control Court and the Rent Control Appellate Authority on the denial of title of the landlord raised by the tenant. The contention was that Ext.A6 is the jenmom assignment deed executed by Appukutty Chettiar in favour of K.P.Gangadharan and that in the said document, the number of the building in question was shown as 11/153 although the correct

number of the building was 11/174. On this basis, despite the fact that in Ext.A6 itself the new building number is shown correctly as 11/177, it is still contended that in as much as old building No.11/174 is not shown in the document, the building has not been assigned by Appukutty Chettiar to Gangadharan Pillai. We have heard the submissions and we do not find any merit in this contention.

6. It is an admitted fact that Ext.A6 document executed by Appukutty Chettiar in favour of Gangadharan Pillai mentions the new number of the building, 11/177. The tenant has not disputed the new building number mentioned in Ext.A6. Ext.A1 is the jenmom assignment deed executed by Gangadharan Pillai in favour of the first respondent herein, the landlord. That document also mentions the new building number, 11/177. Therefore, so long as building No.11/177 is mentioned in Exts.A6 and A1 and as the tenant has not disputed that the number of the building of which he is in possession is also 11/177, in our view, the attempt, if at all, is to take advantage of a mistake in Ext.A6.

7. Two other circumstances are also against the tenant. Ext.A4 is found to be the joint notice sent by the petitioner herein and Gangadharan on 14.7.2003 wherein, mention is made with regard to the assignment in favour of the first respondent – landlord. It is

conceded before the court that the tenant had not responded to Ext.A4 and similarly, Ext.A5 is the notice issued on behalf of the first respondent preceding the institution of the rent control proceedings, which also, despite having admittedly served on the tenant, was not responded. If the tenant had any dispute that there has not been assignment of title in favour of the first respondent – landlord or that the property assigned did not include the building in question, the tenant would certainly have raised that contention on receipt of these notices. Having not done so, the present attempt of the tenant to raise this contention, is only to create confusion and to resist his inevitable eviction.

8. We also note that Exts.A7 and A8 disclosed that there were earlier proceedings between the revision petitioner – tenant and Gangadharan Pillai in which also he had not raised any such contention. In view of the facts as stated above, we do not find any merit in this revision. No other points have been raised by the learned Senior Counsel Mr.M.C.Sen.

9. It is seen that in the building in question, the tenant is carrying on a business. In the circumstances of the case, we feel that the tenant has to be given a reasonable time to vacate from the premises. Accordingly, execution proceedings, pursuant to the order

of the Rent Control Court, shall stand deferred till 13.7.2007, subject to the following conditions:

(1) Arrears of rent, shall be fully paid within a period of one month from today.

(2) An amount equivalent to the rent shall be paid by the revision petitioner towards compensation for the use and occupation of the building.

(3) The petitioner shall not induct any third parties to the building.

(4) In an affidavit to be filed by the revision petitioner in the Execution Court within two months from today, he shall undertake to surrender vacant possession of the building to the first respondent – landlord on or before 13.7.2007.

We clarify that in the event of the revision petitioner – tenant fails to comply with any of the above conditions, the landlord will be free to seek eviction of the tenant forthwith.

R.C.R. is disposed of as above.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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